

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MEMORANDUM OPINION AND ORDER

MC LAUGHLIN, SEAN J., J.

Presently pending before the Court is the Defendant's Motion for Amendment of Judgement Pursuant to Federal Rules of Civil Procedure Rule 59(e) and Request for Hearing to Resolve Dispute [Doc. No. 43]. Defendant seeks an amendment of this Court's previous Order dated October 28, 2009, wherein I denied his motions for a reduction of his sentence based upon, *inter alia*, the adoption in 2007 of Amendment 706 by the United States Sentencing Commission, which retroactively reduces by two points the offense level for persons sentenced under U.S.S.G. § 2D1.1(c) for crack cocaine. In support, Defendant relies on Spears v. United States, 129 S.Ct. 840 (2009), which held that district courts are entitled to reject and vary categorically from the crack-cocaine Guidelines based upon a policy disagreement with those Guidelines. Spears, 129 S.Ct. at 843-44. Here, however, a mandatory minimum sentence was imposed pursuant to statute. Consequently, the Defendant's reliance on Spears is misplaced.

Accordingly, on this 25th day of November, 2009, and for the reasons set forth above,
IT IS HEREBY ORDERED that Defendant's Motion for Amendment of Judgement
Pursuant to Federal Rules of Civil Procedure Rule 59(e) and Request for Hearing to Resolve
Dispute [Doc. No. 43] is DENIED.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record.